

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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| DANNY J. WERTZ, | : | |
| Plaintiff | : | |
| | : | No. 1:14-cv-1991 |
| v. | : | |
| | : | (Judge Kane) |
| GEA HEAT EXCHANGERS INC., | : | |
| PHE DIVISION, et al., | : | |
| Defendants | : | |

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On October 14, 2014, Plaintiff filed the above-captioned disability discrimination and retaliation case against his former employer and various individual Defendants, alleging violations of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.* (“ADA”), the Family Medical Leave Act, 29 U.S.C. § 2615 *et seq.* (“FMLA”), and parallel provisions of the Pennsylvania Human Relations Act, 43 Ps. Cons. Stat. §§ 951 *et seq.* (“PHRA”). (Doc. No. 1.) On October 11, 2016, this Court referred Defendants’ pending motion for summary judgment (Doc. No. 53), to Magistrate Judge Carlson for preparation of a Report and Recommendation. (Doc. No. 71.) On December 29, 2016, Magistrate Judge Carlson issued his Report and Recommendation recommending denial of Defendants’ motion for summary judgment. (Doc. No. 72.)

Defendants filed Objections to the Report and Recommendation (Doc. No. 73), with a supporting brief (Doc. No. 74), on January 12, 2017. Plaintiff filed a brief in opposition to Defendants’ Objections on January 26, 2017. (Doc. No. 75.) In their Objections, Defendants argue that: (1) the Report and Recommendation’s conclusion that there exists a genuine dispute of material fact as to whether Plaintiff is a qualified individual with a disability is incorrect, as

that conclusion is based on a “sham” Declaration and overlooks undisputed evidence; (2) the Report and Recommendation improperly conflates its analysis of Plaintiff’s ADA and FMLA claims, and fails to adequately address Defendants’ legitimate, nondiscriminatory reason for terminating Plaintiff and the issue of pretext; and (3) the Report and Recommendation improperly fails to address Defendants’ argument that the individual claims against Defendant Brubaker and Defendant Delaronde should be dismissed. (Doc. No. 73 at 2.)

After careful review of the record, the Court finds Defendants’ Objections to be without merit. As to Defendants’ first Objection, the Court finds that the record reveals disputed issues of fact regarding whether Plaintiff is a qualified individual with a disability, without regard to the Declaration referenced by Defendant. (See Doc. No. 57, Plaintiff’s Response to Defendants’ Statement of Undisputed Material Facts ¶¶ 52-56.) With regard to Defendants’ second Objection, the Court finds that the Report and Recommendation adequately analyzes Plaintiff’s FMLA and ADA claims, including Defendants’ proffered legitimate, nondiscriminatory reason for Plaintiff’s termination, and Plaintiff’s evidence of pretext. (See Doc. No. 72 at 12-13, 25-34.) Finally, while the Report and Recommendation does not explicitly discuss Defendants’ argument that it is entitled to summary judgment as to Plaintiff’s claims against individual Defendants Brubaker and Delaronde, the Court’s review of the evidence of record reveals disputed issues of material fact precluding the entry of summary judgment in favor of those Individual Defendants on the claims asserted against them. (See Doc. No. 57, Plaintiff’s Response to Defendants’ Statement of Undisputed Material Facts ¶¶ 29-30, 97-99, 105, 108.)

ACCORDINGLY, upon independent review of the record and applicable law, on this 3rd day of March 2017, **IT IS ORDERED THAT**:

1. Magistrate Judge Carlson’s Report and Recommendation (Doc. No. 72), is **ADOPTED**; and

2. Defendants' Motion for Summary Judgment (Doc. No. 53), is **DENIED**.

IT IS FURTHER ORDERED THAT, upon consideration of the parties' Stipulation for Dismissal (Doc. No. 70), as to Defendants Jan Kurkus and Lutz Wolf, pursuant to Federal Rule of Civil Procedure 41(a)(1):

1. Plaintiff's claims against Defendants Kurkus and Wolf are **DISMISSED WITH PREJUDICE**;
2. The Clerk of Court is directed to terminate Defendants Kurkus and Wolf as Defendants in this action; and
3. There shall be a status telephone conference on March 22, 2017 at 1:30 p.m. to set a date for trial of this matter. The telephone number of the Court is 717-221-3990. Plaintiff's counsel shall initiate the call.

s/ Yvette Kane

Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania